

Short Title: Reform/Correct/Wills and Trusts.

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE JUDICIAL REFORMATION OF WILLS TO CORRECT
MISTAKES AND THE JUDICIAL MODIFICATION OF WILLS TO ACHIEVE THE
TESTATOR'S TAX OBJECTIVES AND TO REVISE THE NORTH CAROLINA
UNIFORM TRUST CODE TO ACHIEVE CONSISTENCY IN THE REFORMATION
OF TRUSTS WITH THE REFORMATION OF WILLS.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 31 of the General Statutes is amended by adding a new Article to
read:

"Article 10.

"Reformation or Modification of Wills.

"§ 31-61. Reformation of will to correct mistakes.

The court may reform the terms of a will if the terms of the will are ambiguous to
conform the terms to the testator's intent if both of the following are proved by clear and
convincing evidence:

(1) What the testator's intent was.

(2) The terms of the will were affected by a mistake of fact or law, whether in
expression or inducement.

"§ 31-62. Modification of will to achieve testator's tax objectives.

The court may modify the terms of a will in a manner that is not contrary to the testator's
probable intent to achieve the testator's tax objectives. The court may provide that the
modification has retroactive effect.

"§ 31-63. Filing of action for reformation or modification of will; bar to caveat.

(a) An action for reformation or modification of a will shall be filed in the superior court division of the General Court of Justice under Article 26 of Chapter 1 of the General Statutes.

(b) The personal representative is a necessary party to an action for reformation or modification of a will.

(c) If a person interested in the estate files an action for reformation or modification of a will, that person is barred from thereafter filing a caveat to the will under Article 6 of this Chapter."

SECTION 2.(a) G.S. 28A-2-4 reads as rewritten:

"§ 28A-2-4. Subject matter jurisdiction of the clerk of superior court in estate proceedings.

(a) The clerks of superior court of this State, as ex officio judges of probate, shall have original jurisdiction of estate proceedings. Except as provided in subdivision (4) of this subsection, the jurisdiction of the clerk of superior court is exclusive. Estate proceedings include, but are not limited to, the following:

(1) Probate of wills.

(2) Granting and revoking of letters testamentary and letters of administration, or other proper letters of authority for the administration of estates.

(3) Determination of the elective share for a surviving spouse as provided in G.S. 30-3.

(4) Proceedings to ascertain heirs or devisees, to approve settlement agreements pursuant to G.S. 28A-2-10, to determine questions of construction of wills, to determine priority among creditors, to determine

whether a person is in possession of property belonging to an estate, to order the recovery of property of the estate in possession of third parties, and to determine the existence or nonexistence of any immunity, power, privilege, duty, or right. Any party or the clerk of superior court may file a notice of transfer of a proceeding pursuant to this subdivision to the Superior Court Division of the General Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a transfer to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to ~~a trust~~ an estate proceeding pending before the clerk of superior court to the extent consistent with this Article.

(b) Nothing in this section shall affect the right of a person to file an action in the Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes. In the event that either the petitioner or the respondent in an estate proceeding requests declaratory relief under Article 26 of Chapter 1 of the General Statutes, either party may move for a transfer of the proceeding to the Superior Court Division of the General Court of Justice as provided in Article 21 of Chapter 7A of the General Statutes. In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to an estate proceeding to the extent consistent with this Article.

(c) Without otherwise limiting the jurisdiction of the Superior Court Division of the General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection (a) or ~~(e)~~(b) of this section or G.S. 28A-2-5 of the following:

- (1) Actions by or against creditors or debtors of an estate, except as provided in Article 19 of this Chapter.

(2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.

(3) Caveats, except as provided under G.S. 31-36.

(4) Proceeding to determine proper county of venue as provided in G.S. 28A-3-2.

(5) Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b)."

SECTION 2.(b) This section is effective when this act becomes law.

SECTION 3. G.S. 28A-2-4(c), as amended by Section 2 of this act, reads as rewritten:

"(c) Without otherwise limiting the jurisdiction of the Superior Court Division of the General Court of Justice, the clerk of superior court shall not have jurisdiction under subsection (a) or (b) of this section or G.S. 28A-2-5 of the following:

(1) Actions by or against creditors or debtors of an estate, except as provided in Article 19 of this Chapter.

(2) Actions involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.

(3) Caveats, except as provided under G.S. 31-36.

(4) Proceeding to determine proper county of venue as provided in G.S. 28A-3-2.

(5) Recovery of property transferred or conveyed by a decedent with intent to hinder, delay, or defraud creditors, pursuant to G.S. 28A-15-10(b).

(6) Actions for reformation or modification of wills under Article 10 of Chapter 31 of the General Statutes."

1 **SECTION 4.** G.S. 36C-4-415 reads as rewritten:

2 “§ **36C-4-415. Reformation to correct mistakes.**

3 The court may reform the terms of a ~~trust, even if unambiguous,~~ trust if the terms of the
4 trust are ambiguous to conform the terms to the settlor's ~~intention~~ intent if it is proved by clear
5 and convincing evidence ~~that both~~ what the settlor's intent was and that the terms of the trust
6 were affected by a mistake of fact or law, whether in expression or inducement. ~~Jurisdiction of a~~
7 ~~proceeding brought under this section shall be as provided in G.S. 36C 2-203."~~

8 **SECTION 5.** The Revisor of Statutes shall cause to be printed all explanatory comments
9 of the drafters of Section 4 of this act, as the Revisor may deem appropriate.

10 **SECTION 6.** Except as otherwise provided in this act, this act becomes effective
11 January 1, 2018. Sections 1 and 3 of this act apply to estates of decedents dying before, on, or
12 after that date. Section 4 of this act applies to actions for the reformation of trusts filed on or
13 after that date.